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No. 98-285

IN THE
Supreme Court of the United States
OCTOBER TERM, 1998

JOHN HAMMONS, an individual, dba
FULL CIRCLE DISTRIBUTING, a sole proprietorship,
Petitioner,

v.

ALCAN ALUMINUM CORP., ALUMINUM COMPANY OF AMERICA, ALUMAX INC., KAISER ALUMINUM CORPORATION, REYNOLDS METALS CO., THE ALUMINUM ASSOCIATION,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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PARTIES TO THE PROCEEDINGS BELOW

Plaintiff-Petitioner:

John Hammons, an individual, dba Full Circle Distributing, a sole proprietorship

Defendants-Respondents:

Alcan Aluminum Corp., a Delaware Corporation; Aluminum Company of America, a Pennsylvania Corporation; Alumax Inc., a Delaware Corporation; Kaiser Aluminum Corporation, a Delaware Corporation; Reynolds Metals Co., a Delaware Corporation; The Aluminum Association, a Delaware Corporation.

RULE 29.6 LISTING

Pursuant to Supreme Court Rule 29.6, each Respondent respectively lists below all of its parent companies and nonwholly owned subsidiaries, as may be applicable.

Alcan Aluminum Corp.

All of the shares of Alcan Aluminum Corporation ("Alcan") are held by Alcan Aluminium Ltd., which issues shares traded on the New York Stock Exchange. Alcan has no subsidiaries or affiliates that have issued shares to the public.

Alumax Inc.

The parent company of Alumax Inc. is Aluminum Company of America. Alumax Inc. has no nonwholly owned subsidiaries that have issued stock to the public.

Aluminum Company of America

The stock of Aluminum Company of America ("ALCOA") is traded on the New York Stock Exchange. Through certain of its wholly-owned subsidiaries, ALCOA

owns a minority interest in Reserve Industries, Inc. The stock of Reserve Industries, Inc. is publicly traded.

Kaiser Aluminum Corporation

Shares of Kaiser Aluminum Corporation ("Kaiser") are owned by MAXXAM, Inc. (27.90%) and MAXXAM Group Holdings, Inc. (35.40%). The remainder are widely held, with shares traded on the New York Stock Exchange. Charles E. Hurwitz, members of his family and trusts for the benefit thereof have approximately 68.9% of the combined voting power in MAXXAM, Inc. Kaiser has no subsidiaries or affiliates that have issued shares to the public.

Reynolds Metals Company

Reynolds Metals Company is a public company, with shares traded on the New York Stock Exchange. Reynolds Metals Company has no subsidiaries or affiliates that have issued shares to the public.

The Aluminum Association

The Aluminum Association has no parent or subsidiary corporations.

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BRIEF OF RESPONDENTS IN OPPOSITION

Respondents Alcan Aluminum Corp., Aluminum Company of America, Alumax Inc., Kaiser Aluminum Corporation, Reynolds Metals Co., and The Aluminum Association oppose the petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit reached by Judges Hall, Brunetti, and Rymer.

COUNTERSTATEMENT OF THE CASE

A. Preliminary Statement

None of the considerations set forth in the Court's Rule 10 is present here. In particular, the court of appeals'

decision does not conflict with relevant decisions of this Court, as Petitioner asserts, and none of the questions that the Petitioner seeks to present have divided the lower courts. To the contrary, the legal principles relied upon by the courts below are well-settled and their application to the facts pled in this case is fully consistent with the authorities of this Court.

In his desire to entice the Court's interest, Petitioner, who was plaintiff below, runs from the case that he pleaded.[1] Whereas he insists here that he is aiming at what he labels a "domestic price fix," his 47-page Verified Complaint challenges under California state antitrust law the negotiation among six sovereigns of an intergovernmental Memorandum of Understanding ("MOU") and Respondents' (defendants below) petitioning activity in connection therewith. In that pleading, Petitioner named the signatory sovereign governments, including the United States, as antitrust co-conspirators; he attacked as unlawful an intergovernmental agreement negotiated at the behest of the Russian Federation by the United States Trade Representative ("USTR") with consultation by the Justice Department; and he asserted antitrust liability against Respondents for having acted as advisors at the request of the USTR during the course of the intergovernmental negotiations. The courts below had no difficulty in concluding that each of the Political Question, Act of State, and *Noerr-Pennington* doctrines bars Petitioner's broadscale challenge to governmental conduct and protected petitioning activity, especially in an area of sensitive foreign policy committed to the discretion of the Executive Branch.

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[1] Respondents object to Petitioner's "Questions Presented" for this reason. Each contains the false assumption—which is contrary to the record of the proceedings and the Verified Complaint—that Petitioner alleged different claims than he did. His "Questions" are neither presented by the case nor worthy of certiorari review.

For these reasons, Petitioner cannot—and does not—cite any specific misstatement of law made by either of the lower courts. Rather, Petitioner claims here that he is leaving behind all of his verified allegations and would have this Court focus on a purported claim of domestic price-fixing. Yet, stripped of the underlying allegations about the intergovernmental MOU, there remains no factual allegation by Petitioner to make out a price-fixing claim. Moreover, when the lower courts afforded him an opportunity to bring forward any relevant facts not pleaded to support a price-fixing theory asserted in his briefs, he could not. Two courts already have parsed the Verified Complaint, deemed its allegations as true (a point Petitioner does not dispute), applied the undisputed legal principles to the facts pleaded, and found nothing there. Both courts properly declined to credit Petitioner's revisionist arguments as to the claim pleaded in the Verified Complaint.

Petitioner's brief here simply attempts to make this case something it is not. No facts are alleged to support the case Petitioner wishes he could plead. No pleading supports the case he characterizes before this Court. No caselaw or conflict supports his effort to interest this Court in a matter that, from the face of the Verified Complaint, is plainly barred by the Political Question doctrine, by the Act of State doctrine, and by the *Noerr-Pennington* doctrine.

B. Counterstatement of Facts

Purporting to represent a nationwide class of all direct and indirect purchasers of primary aluminum manufactured by Respondents from January, 1994 to March, 1996, Petitioner challenges as illegal a multi-government effort to negotiate and resolve an international aluminum crisis. In the words of the Verified Complaint, it "challenges as illegal [under California's Cartwright Act] the actions of [Respondents] and their co-conspirators in creating and implementing an agreement, combination and

conspiracy and concert of action amongst themselves in conjunction with a Memorandum of Understanding entered into by the Russian Federation, Canada, and the United States to restrict the production of primary aluminum." [Verified Complaint, ¶ 1.] The "co-conspirators" are identified as the Signatories to the MOU (the governments of the Russian Federation, the United States, the European Union, Canada, Australia, and Norway). [*Id.* ¶¶ 18, 42-43.]

Throughout the Verified Complaint, Petitioner (a bicycle maker) placed this intergovernmental MOU at the center of his case. As recounted in his Verified Complaint, this international crisis arose out of the collapse of Communism. Aluminum from countries of the former Soviet Union, once used internally for military applications, was redirected as exports to flow throughout the world. This flood of Russian aluminum caused the European Union to impose trade sanctions in the form of interim quotas on Russian aluminum imports. The Russian Federation feared retaliation from other countries as well. It took the view that the imposition of expanded trade barriers would be "fraught with serious negative economic and social consequences." [*Id.* ¶ 40.] According to the Verified Complaint, the other governments that subscribed to the MOU shared the belief that "if [the trade talks] are unsuccessful, unilateral trade sanctions may be imposed by governments or private parties." [*Id.* ¶ 52.]

The public record confirms these political circumstances. A public document was presented during the summary judgment briefing showing that the USTR issued a *Federal Register* notice entitled *Request for Public Comment on Strategies To Address Increased Exports of Primary Aluminum From Newly Independent States.* 58 Fed. Reg. 50061 (1993). The USTR sought public comment on the effect of Russian aluminum on the world aluminum market, the issues raised by the EU quota, and potential government strategies to address the situation. Two joint letters were sent by twenty-four Senators and

forty-six Congressmen to President Clinton urging that multi-government negotiations begin immediately to address Russian aluminum exports. In January, 1994, President Clinton, in several addresses at the Kremlin and in Eastern European countries, emphasized the policies of keeping economic reform going in Russia while at the same time helping the Russian people. Speaking of Russia's continuing transition, he stated, "One of our priorities, therefore, should be to reduce trade barriers to the former Communist states. . . . The economic success of these states simply cannot be separated from our own removal and security."

The Verified Complaint asserts that the Russian Federation—recognizing "the crisis existing in the world market for primary aluminum"—invited the governments of the six major aluminium producing nations to participate in a series of meetings to address the global aluminum situation. [*Id.* ¶ 40.] The Verified Complaint asserts that the alleged agreement to reduce production took place at multilateral talks in Moscow, Washington, D.C., and Brussels between the representatives of the six Signatory Nations during October, 1993 to March, 1994. [*Id.* ¶¶ 2, 3, 5, 40-42.]

The United States, according to the Verified Complaint, participated in the intergovernmental consultation through the USTR. [*Id.* ¶ 50.] In so participating, "[t]he United States government . . . requested input from the U.S. aluminum industry." [*Id.*] Thus, the Respondents' role in the process was "as advisors to the U.S. Trade Representative" during the course of the intergovernmental negotiations. [*Id.; see also id.* ¶ 41.] During the course of the discussions, the U.S. Government "conduct[ed] a review as regards legal requirements related to the Memorandum of Understanding." [*Id.* ¶ 44.]

According to the Verified Complaint, the culmination of these governmental meetings was the agreement to the Memorandum of Understanding by the six sovereigns, including the United States. The MOU was attached to and incorporated in the Verified Complaint. The unique

world-wide political events that precipitated the sovereigns' negotiation of the MOU are set forth in the text of the document itself.

- The MOU expressly recognized that "the world aluminum industry is facing a grave, exceptional and unforeseeable situation involving a considerable current excess global supply of primary aluminum."
- The Signatory Nations agreed that "these present structural problems are due to an unanticipated combination of political and economic developments which is unlikely to re-occur."
- The Signatory Nations considered that "unilateral trade actions [such as the EU quota that had been put into effect] are not the preferred response to the current aluminum market problems" and stated that such actions would be inconsistent with the MOU.
- In the assessment of the Signatory Nations, the "principal response to this situation should be by way of world-wide market-oriented commercial decisions by companies on an individual basis."
- The MOU noted the intention of the Russian Federation to decrease the production of primary aluminum by 500,000 metric tonnes per year.
- The Signatory Nations "noted that commercial decisions by producers in other States could also be expected to facilitate the return to normal market conditions."
- The sovereigns considered that, on the basis of their objective analysis of conditions in the aluminum market, their assessment of possible adjustment by market-oriented commercial decisions by producers in other states, as well as the Russian Federation's commitment to reduce production by 500,000 metric tonnes per year, the situation in the world aluminum market showed a likely aggregate reduction in worldwide production of an amount compatible with the assessment of a global

excess supply of 1.5 million to 2 million metric tonnes per year.

- The Signatory Nations agreed to examine "all means" available "to provide technical and other assistance to the Russian Federation to facilitate modernization, the improvement of environmental standards and the development of internal aluminum consumption." They also committed to specific forms of cooperation, assistance, and foreign aid to the Russian Federation.

According to the Verified Complaint, in connection with the negotiation of the MOU, the Russian Federation reiterated in a unilateral statement in January, 1994 its intention to reduce Russian production of primary aluminum and clarified that it possessed and intended to use the legal means at its disposal to cause Russian producers to implement this reduction. It reiterated that the other Signatory Nations were to "refrain from maintaining existing protectionist measures or introducing new ones in the trade in aluminum." [*Id.* Exh. 9.] In a March, 1994 unilateral statement, the Russian Federation confirmed that the MOU "reflects the general expectation that market forces are likely to lead to the world-wide reduction in annual aluminum production." [*Id.* ¶ 45.]

In the seventy paragraphs of the Verified Complaint, the only joint action ascribed to Respondents is their alleged participation as "advisors" to the United States in regard to these intergovernmental negotiations. [*Id.* ¶¶ 41, 43, 50.] No agreement among or other joint activity by Respondents is alleged.

Similarly, the single allegation of commercial (as opposed to political) conduct by Respondents is asserted individually as to each Respondent: that each producer cut back production at some time after the MOU and with knowledge of the intergovernmental agreement. Petitioner then alleges: the "effect of the conduct of [Respondents] and their co-conspirators [the six governmental signatories] was to cause the Western World production

of primary aluminum to decrease." Petitioner claims that the result was an increase in primary aluminum prices, injuring purchasers.

Respondents moved to dismiss the Verified Complaint on the grounds that the assault on the negotiation of the intergovernmental agreement and on Respondents' petitioning conduct concerning it were barred by each of the doctrines of Political Question, Act of State, and *Noerr-Pennington*. Respondents also demonstrated that Petitioner's sole remaining factual allegation—that each producer cut production after the MOU—failed to state a claim because mere parallel conduct is not actionable under the antitrust laws.

Petitioner responded below to the motion to dismiss with arguments from his lawyer that his antitrust case was based upon a theory of a "domestic price fix." But no factual allegations in his Verified Complaint supported such an argument. Nor was Petitioner able to reconcile such a theory with the Verified Complaint, which was centered on the MOU and its Signatory Nations.

The district court afforded Petitioner the opportunity to offer or identify any and all factual material he had concerning a purported price-fix by converting the motion to dismiss to one for summary judgment. Petitioner set forth no such facts, however, and never sought to amend the Verified Complaint. His summary judgment brief reiterated a "domestic price-fix" theory, bare of any supporting facts, and asked for an outright denial of summary judgment or a continuance to conduct discovery. He failed to identify facts that justified further inquiry, submitting only material, much of it retrieved from government files through the Freedom of Information Act, that had nothing to do with a domestic price-fix.

After the district court granted summary judgment in favor of Respondents, Petitioner moved for reconsideration, relying on the same arguments. His motion was denied. He appealed to the Ninth Circuit, and, after re-

ceiving a one-page memorandum decision affirming the district court, sought rehearing *en banc*. Rehearing was denied, and no judge asked for a vote on the *en banc* request. Now, having made his argument five times to two courts, and been denied each time, Petitioner asks this Court to revisit the same well-settled legal principles and, on assumptions neither pled in the Verified Complaint nor shown otherwise to have a factual basis, to reinstate a lawsuit found by the courts below to have no life in it.

REASONS TO DENY THE PETITION

The Verified Complaint was dismissed for three independent reasons, and there is no reason for the Court to review the decisions of the lower courts.

I. NO ISSUE MERITS REVIEW CONCERNING THE FINDING THAT THE POLITICAL QUESTION DOCTRINE BARS THE CLAIM PLEADED BY THE VERIFIED COMPLAINT

The decisions of the courts below are squarely consistent with *Baker v. Carr*, 369 U.S. 186 (1962). Petitioner's dissatisfaction with the effect of those principles when applied to his claim presents no reason for this Court to exercise its supervisory powers.

Baker v. Carr was cited to the lower courts by both parties. Indeed, the district court's opinion relied on *Baker's* progeny in applications that are analogous to this case: challenges to the conduct of the Executive Branch in the foreign policy area, *Dole v. Carter*, 569 F.2d 1109 (10th Cir. 1977); challenges to the substance of a trade agreement, *Sneaker Circus, Inc. v. Carter*, 566 F.2d 396 (2d Cir. 1977); and challenges to the grant of foreign aid. *Dickson v. Ford*, 521 F.2d 234 (5th Cir. 1975), *cert. denied*, 424 U.S. 954 (1975). The district court and court of appeals properly found that the claims asserted in the Verified Complaint were barred by the Political Question doctrine.

Petitioner contends here, as he did in the courts below, that *Baker v. Carr* poses no bar because the alleged violations purportedly arise from some domestic price-fix "outside the context of the MOU." Petition at 7. But that is not what his Verified Complaint states. Nor did Petitioner amend his Complaint. And he did not provide any facts outside the Verified Complaint, even when given the opportunity to do so through the vehicle of summary judgment.

The district court properly found that Petitioner's claims fell far short of alleging any such domestic price-fix. Mere parallel conduct by producers does not amount to an allegation of price-fixing, *Theatre Enterprises, Inc. v. Paramount Film Distributing Corp.*, 346 U.S. 537 (1954), and Petitioner does not argue otherwise here.

II. NO ISSUE MERITS REVIEW CONCERNING THE FINDING THAT THE ACT OF STATE DOCTRINE BARS THE CLAIM PLEADED BY THE VERIFIED COMPLAINT

There is no conflict between the decisions in this case and the parameters of the Act of State doctrine as established by the decisions of this Court. *E.g., W.S. Kirkpatrick & Co. v. Environmental Tectonics Corp., Int'l*, 493 U.S. 400 (1990); *Alfred Dunhill of London, Inc. v. Republic of Cuba*, 425 U.S. 682, 697 (1976); *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964); *Oetjen v. Central Leather Co.*, 246 U.S. 297 (1918); *Underhill v. Hernandez*, 168 U.S. 250, 252 (1897). The doctrine precludes adjudication of claims like Petitioner's, which challenge "the effect of official action by a foreign sovereign." *Kirkpatrick*, 493 U.S. at 406.

The only agreement alleged in the Verified Complaint is the MOU negotiated and subscribed to among sovereigns. And the MOU provisions hinge upon the Russian Federation's agreement to cut production of Russian aluminum within its own borders. Such direct attacks on

the Russian sovereign's actions are prohibited by *Kirkpatrick* because they require the courts to decide the official acts of Russia.

Here, too, Petitioner cannot escape this doctrine by refashioning his case to argue here that it presents a price-fix. The Petitioner's argument in his petition that "[R]espondents' activities of private price-fixing did not . . . reflect any decision of a foreign government," Petition at 14, notably fails to mention that no activities of private price-fixing were pleaded or shown by factual material.

III. NO ISSUE MERITS REVIEW CONCERNING THE APPLICATION OF THE *NOERR-PENNINGTON* DOCTRINE TO RESPONDENTS' ALLEGED JOINT PETITIONING CONDUCT

The doctrine that petitioning activities at all levels and branches of government, including the Executive, are insulated from antitrust liability is well-established. *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961); *United Mine Workers v. Pennington*, 381 U.S. 657 (1965). Its parameters have been well-defined by this Court over the years. *E.g., City of Columbia v. Omni Outdoor Advertising, Inc.*, 499 U.S. 365, 380 (1991); *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508 (1972). The courts below properly applied this *Noerr-Pennington* doctrine to bar Petitioner's claims about Respondents' joint petitioning activity.

The Verified Complaint concedes, as it must, that "[t]he United States government . . . requested input from the U.S. aluminum industry" and that Respondents' roles in the process were, accordingly, "as advisors to the United States Trade Representative." Verified Complaint, ¶ 50. The courts below correctly concluded that such petitioning activity is protected and not actionable as a matter of law.

Petitioner's arguments in this Court on this doctrine are non-sequiturs. He asserts in his brief that the U.S. government made no commitment regarding production cutbacks by U.S. producers. This is both unremarkable and ineffective for Petitioner's argument. The point remains that no factual allegations of a domestic price-fix were pleaded. Petitioner's argument that no such U.S. commitment was made and no petitioning for a domestic price-fix was undertaken does nothing to establish that any act of domestic price-fixing was alleged. Similarly, in asserting that Respondents cannot shield domestic price-fixing conduct because they did not petition the government to allow such conduct, Petition at 15, Petitioner assumes that price-fixing was both pleaded and supported with material facts. Neither circumstance occurred.

In presenting his argument to this Court on this point, Petitioner has, on at least four occasions, made the bare statement that Respondents engaged in a private U.S. domestic price-fix. Petition at 15, 17, 19. So stating in a petition does not fill the void of pleadings and supporting factual material regarding any such theory. Petitioner has offered nothing, either here or below, addressing that deficiency.

IV. NO ISSUE MERITS REVIEW CONCERNING THE DISTRICT COURT'S DISCRETIONARY PROCEDURAL STEPS, WHICH PROVIDED PETITIONER ADDITIONAL OPPORTUNITIES TO PROVIDE EVIDENCE IN SUPPORT OF HIS CLAIM

The Verified Complaint was deficient for failing to state a claim on which relief could be granted, and the district court might properly have dismissed it on that ground alone without affording any additional process. Instead the trial court converted the matter to a motion for summary judgment "so that all parties would be given reasonable opportunity to present all material pertinent to the motion." Petition at 8a. This procedural step is within the district court's discretion, and allowed Peti-

tioner the opportunity to bring forward any facts he had failed to plead.

This procedure is entirely consistent with this Court's authorities. The Court has made clear, a decade after the dicta from the opinion in *Poller v. Columbia Broadcasting System, Inc.*, 368 U.S. 464, 473 (1962) (quoted in *Timberlane Lumber Co. v. Bank of America*, 549 F.2d 597, 602 (9th Cir. 1976), *cert. denied*, 472 U.S. 1032 (1985))—on which Petitioner relies—that summary judgment is not "disapproved" in antitrust cases any more than in other cases. Rather, the standards require that the party seeking to defeat the motion come forward with a *genuine* issue of *material* fact. *Matsushita Electronic Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). Generalized allegations or conclusory assertions are not sufficient. *Id.; see also Schroeder v. McDonald*, 55 F.3d 454, 460 (9th Cir. 1995) (conclusory allegations in Verified Complaint do not suffice to oppose summary judgment).

Moreover, where a party is unable to allege any facts or to adduce any evidence to support a claim for relief, he is not entitled to discovery. *See Jarvis v. Regan*, 833 F.2d 149, 155 (9th Cir. 1987) (affirming stay of discovery pending ruling on a motion to dismiss where court assumed truth of all well-pleaded allegations of the complaint). Where the claim asserted is on its own terms legally insufficient—as the courts below found in this case after assuming the pleaded allegations to be true—summary judgment is proper regardless of a request for discovery. *DeVargas v. Mason & Hanger-Silas Mason Co.*, 911 F.2d 1377, 1379 (10th Cir. 1990), *cert. denied*, 498 U.S. 1074 (1991); *Hall v. Hawaii*, 791 F.2d 759, 761 (9th Cir. 1986).

Petitioner's argument conveniently disregards the district court's attempt to help the Petitioner by offering him the chance to bring forth relevant unpleaded factual mate-

rial. The failure to identify any factual material to supplement his deficient pleading revealed that Petitioner could not support his claimed afterthought that Respondents had engaged in some "private price-fix." In truth, Petitioner's only claim was the one set forth in his Verified Complaint centered upon the intergovernmental MOU. This claim was barred by each of the well-settled doctrines of Political Question, Act of State, and *Noerr-Pennington*.

V. NO ISSUE MERITS REVIEW CONCERNING DISMISSAL OF THE ALUMINUM ASSOCIATION FOR LACK OF PERSONAL JURISDICTION

The Aluminum Association further opposes the petition for a writ of certiorari on the question of personal jurisdiction. Dismissal of the Aluminum Association for lack of personal jurisdiction was consistent with well-settled due process requirements that limit a state's power to assert *in personam* jurisdiction over a Respondent lacking minimum contacts with the forum, as this Court has often held. *See, e.g., Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-72 (1985); *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 413-14 (1984); *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980); *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977). "[T]he constitutional touchstone remains whether the Respondent purposefully established 'minimum contacts' in the forum State." *Burger King*, 471 U.S. at 474. The foundation of specific jurisdiction —a "'relationship among the Respondent, the forum, and the litigation'"—is simply lacking here. *Helicopteros Nacionales*, 466 U.S. at 414 (*quoting Shaffer*, 433 U.S. at 204).

Petitioner argues that the "but for" test applied below is unsettled in the Ninth Circuit after *Omeluk v. Langsten Slip & Batbyggeri A/S*, 52 F.3d 267 (9th Cir. 1995). Petitioner, however, is incorrect. As stated by the Ninth Circuit more recently in *Doe v. American National Red*

Cross, 112 F.3d 1048, 1052 (9th Cir. 1997): "[T]he 'but for' test is still employed in determining whether a Petitioner's injuries arose out of a Respondent's forum-related activities."

There is, in any event, no reason for this Court to examine the jurisdictional issue in this case. Petitioner neither alleged nor offered any evidence that the Aluminum Association's occasional, attenuated California contacts relate in any way to the claimed conspiracy. As the district court properly found, the sole allegation linking the Association to the claimed conspiracy is that it acted as advisor to the United States government during intergovernmental meetings held outside of California. Such non-California activities by the Association provides no basis for an assertion of jurisdiction under any test comporting with due process. That finding below was a routine application of established jurisdictional principles, and presents no issue warranting this Court's review. *See, e.g., Helicopteros Nacionales*, 466 U.S. at 415.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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